

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

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6 In the Matter of:

7
8 DELPHI CORPORATION,

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10 Debtor.

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13
14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17
18 August 5, 2007

19 10:05 AM

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21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE
24
25

1 HEARING re Expedited motion for order authorizing and approving
2 Delphi-Appaloosa equity purchase and commitment agreement
3 pursuant to 11 U.S.C. 105(a), 353(b) and 503(b) and 507(a)
4 (Docket No. 8673).

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay. Delphi
3 Corporation.

4 MR. BUTLER: Your Honor, good morning. Jack Butler,
5 Kayalyn Marafioti and Al Hogan on behalf of -- from Skadden
6 Arps on behalf of Delphi Corporation for this omnibus hearing
7 to consider the proposed Delphi/Appaloosa investment agreement.
8 This was filed -- the motion was filed at docket number 8673
9 and we're here before the Court in an order to show cause
10 entered by the Court on July 19, 2007 at docket number 8694.

11 Your Honor, the only response that's been filed to
12 this motion that could be construed as an objection was filed
13 by Highland Capital Management, LP at docket number 8642 and
14 again at 8754. Judith Elkin is here on behalf of Highland
15 Capital and at -- prior to the commencement of the hearing this
16 morning she confirmed, on behalf of Highland, to me that
17 Highland does not consider that filing to constitute an
18 objection nor, from their perspective, for this to be a
19 contested hearing. I'd like Ms. Elkin to confirm that on the
20 record.

21 MS. ELKIN: That's correct, Your Honor.

22 THE COURT: Okay. Thank you.

23 MR. BUTLER: Your Honor, what I'd like to do, briefly
24 if I can, to put in the evidentiary record, and there are a
25 number of stakeholders, including both the statutory committees

1 and General Motors who would like to be heard briefly on the
2 motion today.

3 THE COURT: Okay.

4 MR. BUTLER: What I'd first like to do, Your Honor,
5 is begin with -- in the evidentiary record, is begin with the
6 exhibits. We have prepared a joint index of exhibits. There
7 were -- there are ninety-nine of them. Essentially, the
8 exhibits include the declarations of Mr. Sheehan, Mr. Reznick
9 and Mr. Miller who have provided testimony in support of the
10 motion. Exhibits number 4 through 11 are the actual
11 transaction documents for Delphi and Appaloosa and we have --
12 for the Appaloosa transaction we have, I'll just point out to
13 Your Honor, put black lines in at Exhibits 12 and 13. That
14 black-line this against earlier EPGAs received from Appaloosa,
15 particularly number 13 is the black-line against the original
16 EPGA. We have also, then, at Exhibits 14 through 20, put in
17 the Highland Capital final proposal documents. We've also
18 black-lined those documents against two earlier EPGAs received
19 from Highland, one on July 1st and one back on January 9th of
20 this year.

21 Documents -- Exhibits number 21 through 44 are a
22 series of exhibits that involve communications and
23 presentations between Highland and Delphi. And then Exhibits
24 45 through 47 black line and compare the investment proposal,
25 the EPGA, the equity commitment letters and the proposal

1 letters between Appaloosa and Highland. Those black lines were
2 -- the contents of those black lines were reviewed by the board
3 of directors at the July 17th evening meeting and again on July
4 18th with the transaction committee.

5 Documents 48 through 51 are the exhibits that are the
6 presentations by Rothschild, Inc., Delphi's investment banker
7 and strategic financial advisor that were presented to the
8 board of directors on July 16th and 17th of this year.

9 We have included at Exhibits 52 through 58, excerpts
10 from the joint meeting of our Delphi statutory committees
11 dating all the way back to February 7th that outline the
12 evolution of the plan, framework and investment discussions
13 leading up to the board's approval of the current EPGA that's
14 before the Court.

15 Exhibits 59 through 76 are the meetings, some fifteen
16 meetings, of the board of directors that have occurred since we
17 were last before Your Honor on an EPGA during the first six
18 months of this year.

19 Exhibits 77 through 82 are the press releases issued
20 by the company with respect to these matters. And then just
21 rounding it out, Exhibits 83 through 90 are court documents
22 concerning the original EPGA and the PSA, the planned support
23 agreement. Just a note here, Your Honor, there is no plan
24 framework support agreement with this EPGA; instead those
25 provisions that were relevant to the plan framework are now

1 attached as Exhibit B to this EPGA. And then finally, at
2 Exhibit 91 through 96 are court documents relating to the
3 current EPGA before the Court and there's some demonstrative
4 exhibits at 97 to 99.

5 We did hold a meet and confer, as requires by the
6 order to show cause, on Monday that was participated in by the
7 statutory committees and by Highland, among others. And we did
8 serve these exhibits as required by the order to show cause and
9 we have confirmed that there are no parties, that at least
10 we're aware of, that participated in the meet and confer that
11 have any objections to the admission of these matters into
12 evidence. And therefore, Your Honor, I move the admission of
13 Exhibits 1 through 99.

14 THE COURT: Okay. Let me just confirm that. Does
15 anyone object to the admission of these documents into evidence
16 for purposes of this hearing? Okay. I will admit them in.
17 (Declarations of Mr. Sheehan, Reznick and Miller were hereby
18 received as joint Exhibits 1-4 for identification, as of this
19 date.)

20 (Transaction Documents was hereby received as joint Exhibits 4-
21 11 for identification, as of this date.)

22 (Black Lined Copies against earlier EPGA were hereby received
23 as joint Exhibits 12-13 for identification, as of this date.)

24 (Highland Capital Proposal Documents were hereby received as
25 joint Exhibits 14-20 for identification, as of this date.)

1 (Communications and Presentations between Highland and Delphi
2 were hereby received as joint Exhibits 21-44 for
3 identification, as of this date.)

4 (Black line Investment Proposal were hereby received as joint
5 Exhibits 45-47 for identification, as of this date.)

6 (Presentations by Rothschild, Inc. were hereby received as
7 joint Exhibits 48-51 for identification, as of this date.)

8 (Excerpts from Joint Meeting of Delphi Statutory Committees
9 were hereby received as joint Exhibits 52-58 for
10 identification, as of this date.)

11 (Meetings of Board of Directors were hereby received as joint
12 Exhibits 59-76 for identification, as of this date.)

13 (Press Releases were hereby received as joint Exhibits 77-82
14 for identification, as of this date.)

15 (Court Documents regarding EPGA and PSA were hereby received as
16 joint Exhibits 83-90 for identification, as of this date.)

17 (Court Documents Relating to Current EPGA were hereby received
18 as joint Exhibits 91-96 for identification, as of this date.)

19 (Demonstrative Exhibits were hereby received as joint Exhibits
20 97-99 for identification, as of this date.)

21 MR. BUTLER: Thank you, Your Honor. Your Honor,
22 turning to the declarations, and just to briefly run through
23 them, the first declaration that we would have is the
24 declaration of John D. Sheehan, our chief restructuring officer
25 in support of the EPGA. That -- I've just moved that into

1 evidence subject to cross examination. Mr. Sheehan is in the
2 courtroom, Your Honor, and I would present him to the Court for
3 any questions or for cross examination by any party.

4 THE COURT: Okay. I've reviewed the declaration;
5 does anyone wish to cross examine Mr. Sheehan? Okay, then I'll
6 admit the declaration as a proffer of his testimony.

7 MR. BUTLER: Thank you, Your Honor. Your Honor,
8 we've sought to admit, as Exhibit number 2, the declaration of
9 David L. Reznick, from Rothschild, Inc., the company's senior
10 investment banker and I would like to present now, Mr. Reznick,
11 to the Court for any questions from the Court or for cross
12 examination from any party.

13 THE COURT: Okay. I've -- I've read Mr. Reznick's
14 declaration and the exhibits that were attached. Does anyone
15 wish to cross examine him? All right, then I'll admit that
16 into evidence as well, as his testimony.

17 MR. BUTLER: And finally, Your Honor, we have in
18 court today the executive chairman of Delphi Corporation, Steve
19 Miller, whose declaration is Exhibit 3 which we've sought to
20 admit into evidence. And now present him for any questions
21 from the Court or cross examination from any party.

22 THE COURT: Okay. And again, I've read Mr. Miller's
23 declaration. Does anyone wish to cross examine him on it? All
24 right, then I will, again, admit his declaration as his
25 testimony.

1 MR. BUTLER: Your Honor, that -- the admission of the
2 99 exhibits including the three declarations from the party
3 witnesses are the -- constitute the evidentiary record in
4 support of the EPGA. We have, in our motion and in our
5 response, detailed along in the declarations -- detailed at
6 some length the basis and the process the company used to go
7 forward and come to the point where the company thought it was
8 appropriate in the best interest of the estate to approve this
9 EPGA and bring it to this Court for approval. In the -- given
10 that this has done so with the broad support of our statutory
11 committees and General Motors and it has been reviewed with
12 other parties who have had input, including the MDL plaintiffs
13 among others, who are also represented in the courtroom today,
14 Your Honor, I'm going to rely on the papers that we've
15 submitted rather than to make any kind of extended argument
16 today. I would like, however, to cede the podium to
17 representatives of each of the statutory committees and to
18 General Motors who I know want to make statements. And then to
19 any other party who wants to make a statement, Your Honor.

20 THE COURT: Okay.

21 MR. BROUDE: Good morning, Your Honor. Mark Broude,
22 Latham and Watkins, LLP on behalf of the Official Committee of
23 Unsecured Creditors.

24 As Mr. Butler has indicated, the creditors committee
25 supports the relief being sought today. It supports the

1 Appaloosa/Delphi investment agreement. It's the product of
2 long and occasionally difficult negotiations. And while the
3 parties have not always agreed that they've all worked together
4 cooperatively and in good faith towards what we think is a deal
5 worth pursuing. And as I said, the committee supports them
6 wholeheartedly.

7 Just one side item, and that is we just -- the
8 members of the committee just want to make clear something
9 which is in the documents but takes some reading to get
10 through. And that is, what is referred to as the par rights
11 offering in Exhibit B will be conducted on the same time frame
12 as the capital R rights offerings, so they'll both close by the
13 effective date. But with that clarification, Your Honor, the
14 committee does wholeheartedly support the relief being sought.

15 THE COURT: Okay. And actually I have a question for
16 both you and Ms. Steingart that was raised by the -- I guess
17 the revised plan framework that came in the other night. It
18 contemplates an ability by shareholders to; in essence,
19 purchase the stock that would be otherwise going to the
20 unsecured creditors and GM.

21 MR. BROUDE: And the UAW, Your Honor.

22 THE COURT: And the UAW. Is there going to be -- is
23 there also some -- some election process contemplated for --
24 under the plan for the unsecured creditors to indicate whether
25 they're willing to take cash instead of stock?

1 MR. BROUDE: I think, Your Honor, the way it's set up
2 is that for the roughly 522,000,000 dollars at plan value stock
3 that goes into the par rights offering, that's not an
4 affirmative election by the unsecured creditors. That's
5 therefore the equity they can either take it or not as they
6 choose. And so it's more -- it's more their option rather than
7 hours.

8 THE COURT: All right. But -- but it would be cash
9 in full.

10 MR. BROUDE: Yeah, if -- you know, to the extent that
11 it's exercised it will be cash at the plan value, forty-five
12 dollars per share.

13 THE COURT: And so it would be pro rata cash?

14 MR. BROUDE: Yes.

15 THE COURT: Okay. All right. That's fine.

16 MS. STEINGART: Well, it certainly is -- well, good
17 morning, Your Honor. Bonnie Steingart from Fried Frank on
18 behalf of the equity committee.

19 It certainly is a pleasure to appear before the Court
20 this morning and to be united, both with the other statutory
21 committee and the debtor in seeking the Court's approval of
22 these agreements. The process has been one where the debtors
23 facilitated the inclusion of the equity committee, facilitated
24 our participation in these negotiations. As you've heard,
25 those negotiations at some times were lengthy and sometimes

1 acrimonious, but they did result in a good faith negotiation
2 and arms length agreement. And we support that agreement in
3 all its particulars. Thank you, Your Honor.

4 THE COURT: Okay. Thank you.

5 MR. KESSLER: Good morning, Your Honor. Michael
6 Kessler, Weil, Gotshal and Manges for General Motors
7 Corporation.

8 General Motors also is supportive of the EPGA and the
9 approval of the motion. And we're also optimistic that the
10 ultimate confirmation of a plan that would be undertaken by the
11 EPGA will finally come to light. To be sure, Your Honor, there
12 remains several agreements that are continued under negotiation
13 between General Motors and Delphi that are integral to the
14 overall transaction. We continue to negotiate those. We're
15 optimistic that they will be completed within the near future.
16 And indeed we are negotiating sometimes even around the clock
17 to complete those negotiations.

18 THE COURT: And that's pursuant to the process that
19 was outlined at the last chambers' conference? That's still
20 the process that's been going on for those negotiations?

21 MR. KESSLER: I was not at the chambers' conference
22 but I believe you're correct, Your Honor.

23 THE COURT: Okay. All right. Thanks.

24 MR. BUTLER: Your Honor, we -- in the omnibus reply
25 that we filed yesterday on behalf of the debtors; we filed a

1 black-line order that had several changes in it. I just wanted
2 to briefly summarize them again, on the record, and answer any
3 questions the Court may have.

4 First, there was a finding in the order based on Your
5 Honor's prior -- the prior record and what we believe to be the
6 case, which is this EPGA is not a sub rosa plan and we believe
7 that that finding is supported by the record now, the
8 evidentiary record that's before the Court.

9 In paragraph 3 of the order, we also wanted to make
10 it very clear, that the debtors and plan investors have an
11 amendment right. That amendment right is -- part of that
12 amendment right is already in the EPGA that underlies the --
13 the approval order. But that we would have the right to make
14 amendments that aren't material to the investment agreements or
15 such other amendments that haven't been objected to by the
16 creditors or equity committee, assuming they have -- they get
17 five business days prior notice or agree to a shorter period of
18 time.

19 THE COURT: On that point, are you going to give them
20 the committees notice of -- of all the amendments?

21 MR. BUTLER: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. BUTLER: We'll be -- we'll provide them -- we're
24 working pretty closely with the committees and they'll be
25 advised of all the changes. But the -- we either consent only

1 if the -- there's not objection only if it's a material change.

2 THE COURT: Right.

3 MR. BUTLER: And I should just say, Your Honor, and I
4 think it's clear from the record here that has been made. But
5 Exhibit B to the EPGA and the EPGA itself has a number of -- a
6 lot of numbers in it that relate to share allocations and so
7 forth. Those numbers, ultimately, are going to change as we
8 get the final business plan in place and we sort out the actual
9 number of shares to be issued that were relative -- sharing
10 arrangements, if you will, that have been negotiated, or the
11 absolute dollar amounts are not going to change. But the --
12 there are going to be changes to the numbers throughout the
13 document, for example, as we get the mechanics worked out on
14 how to fully implement this.

15 The other change we made, which is the -- the two
16 other changes we made, is clearly if -- if this is not a sub
17 rosa plan, as the debtors maintain that it is not and I don't
18 think it clearly is not, then the flip side of that coin is
19 that no one -- nothing in the order should limit the rights of
20 any party in interest to object or present evidence and so
21 forth at a confirmation hearing with respect to other legally
22 cognizable objections to confirmation. We're asked to make
23 that clear in the order and so we added a paragraph to do that,
24 a paragraph 7.

25 And then finally, in our original motion we had asked

1 for relief under rule 6004(g), nobody objected to that and so
2 we've added that sentence to the order of that provision, if
3 Your Honor doesn't have a problem with it. Those are the only
4 changes to the order that was originally filed, Your Honor.

5 THE COURT: Okay. All right. Does anyone else have
6 anything to -- to say? All right. I will approve the debtor's
7 entry into the EPGA and the pursuit of all the related
8 transactions. The order, as revised, is fine with me. Clearly
9 this is not a sub rosa plan but rather is an extremely
10 important step that would enable the debtors to confirm a plan
11 if such a plan met all the confirmation requirements of the
12 code.

13 For the same reason, I'm comfortable in ordering that
14 the ten day period, under Rule 6004(g) is waived accordingly.
15 First, because of the consensual nature of this motion and
16 second because it's clear that one of the benefits of this
17 transaction and one of the reasons it's wholly consensual is
18 that the debtor now intends to move expeditiously to get a plan
19 confirmed and to take all the related steps, including
20 preparing and filing registration statements and the like, and
21 there's no reason, given the consensual nature of this relief,
22 to slow down that process. So that order will get entered
23 today.

24 MR. BUTLER: Your Honor, thank you very much. That
25 concludes the matters on today's agenda.

1 **THE COURT: Okay. Thank you very much.**
2 **(Proceedings concluded at 10:23 AM)**
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C E R T I F I C A T I O N

I, Pnina Eilberg, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

August 5, 2007

Signature of Transcriber

Date

Pnina Eilberg

typed or printed name